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15 California Academy of Eye Physicians and Surgeons,
16 and California Medical Association

17
18 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
19
20 IN AND FOR THE COUNTY OF SAN FRANCISCO

21 CALIFORNIA ACADEMY OF EYE
22 PHYSICIANS & SURGEONS, and
23 CALIFORNIA MEDICAL ASSOCIATION

24 Petitioners and Plaintiffs,

25 v.

26 STATE BOARD OF OPTOMETRY and
27 DOES 1-50,

28 Respondents and Defendants.

ENDORSED
FILED
San Francisco County Superior Court
JAN 11 2011
CLERK OF THE COURT
BY: ELIAS BUTE Deputy Clerk

Case No. CGC-11-507241
PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF; VERIFICATIONS

1 Petitioners and Plaintiffs, CALIFORNIA ACADEMY OF EYE PHYSICIANS &
2 SURGEONS ("CAEPS") and CALIFORNIA MEDICAL ASSOCIATION ("CMA")
3 (collectively, "Petitioners"), hereby petition this Court for a writ of mandate, pursuant to Code of
4 Civil Procedure section 1085, and bring this action for declaratory and injunctive relief against
5 Respondents and Defendants, the California STATE BOARD OF OPTOMETRY ("Board of
6 Optometry" or "Respondent") and DOES 1-50. Petitioner CAEPS makes the allegations about
7 itself in paragraphs 8 and 10 below, based upon its own personal knowledge, and Petitioner CMA
8 makes allegations about itself in paragraphs 9 and 10 below, based upon its own personal
9 knowledge; Petitioners CAEPS and CMA make all other allegations herein on information and
10 belief based upon their own and their counsels' investigations.

11 INTRODUCTION AND SUMMARY OF THE ACTION

12 1. This action challenges the validity of a State Board of Optometry regulation that
13 took effect on or about January 8, 2011, California Code of Regulations, Title 16, section 1571
14 ("Regulation 1571")¹. If the regulation in question is not enjoined, it will likely result in the
15 needless visual impairment -- up to and potentially including blindness -- of certain California
16 citizens that suffer, or will in the future suffer, the effects of glaucoma.

17 2. Regulation 1571 deals with how (or whether) optometrists should continue, if at
18 all, to be certified by the State of California to independently treat certain types of glaucoma, a
19 practice that medically-trained ophthalmologists have traditionally and had exclusively performed
20 until 2001. Strict standards for certification of optometrists were enacted after that date requiring
21 completion of classes and thorough clinical training (50 patients treated for two years each) under
22 the direct supervision of an ophthalmologist. In 2008 the Legislature enacted Business and
23 Professions Code section 3041.10, which delegated authority to a 6-member committee to revise
24 the certification standards. (*See repealed* Bus. and Prof. Code § 3041.10, subds. (f)(2) and (g),² a
25 true and correct copy of the complete statute is attached hereto as **EXHIBIT A.**) The delegation

26 ¹ All further references to regulations shall be to Cal. Code of Regs., tit. 16, unless otherwise indicated.

27 ² All further references to statutes shall be to the Business and Professions Code, unless otherwise indicated.

1 of authority was strictly circumscribed. Section 3041.10 imposed a precise process and firm
2 deadlines for the development of new certification processes. The Legislature imposed these
3 detailed requirements because it was "necessary to ensure that the public is adequately protected
4 during the transition to full certification for all licensed optometrists who desire to treat and
5 manage glaucoma patients." (Bus. & Prof. Code §3041.10(a).) In several respects the Board of
6 Optometry failed to substantially comply with the procedural and timeliness requirements in
7 developing and issuing Regulation 1571, and therefore the regulation cannot stand.

8 3. First, the Legislature unequivocally required that "[t]he board . . . shall implement
9 certification requirements pursuant to this section on or before January 1, 2010." (Bus. & Prof.
10 Code §3041.10(f)(2).) Regulation 1571, which seeks to "implement certification requirements,"
11 only became effective on January 8, 2011, more than one year past the deadline imposed by the
12 Legislature. Indeed, by its own terms Section 3041.10 was repealed on January 1, 2010. (*Id.*
13 §3041.10(g).) Accordingly, any regulation that is issued after that date can have no force or
14 effect.

15 4. In addition, the Legislature delineated clear procedural requirements for the study
16 and development of new certification requirements. The required procedures involve (1) study
17 and recommendation by a 6-member committee comprised equally of optometrists and
18 ophthalmologists (the latter to be recommended by Petitioners CAEPS and CMA) and (2) further
19 study and a final recommendation based on the 6-member committee's findings by the Office of
20 Professional Examination Services.³ (Bus. & Prof. Code §3041.10(d)-(f).) The Board of
21 Optometry was required to issue regulations based on the final recommendation that came out of
22 this process. (*Id.* §3041.10(f)(2).) Petitioners assert that the task of developing substantive
23 minimum training requirements for optometrists seeking to be certified to independently treat
24 glaucoma was never accomplished in accordance with the authorizing statute (*i.e.*, repealed
25 Section 3041.10) and, therefore, resulted in a regulation that was void at its inception.

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27 ³ The Office of Professional Examination Services, or OPES, was formerly known (and referred to in
28 Section 3041.10) as the "Office of Examination Resources".

1 5. Specifically, the Office of Professional Examination Services did not rely on any
2 recommendation agreed upon by the 6-member committee, comprised equally of
3 ophthalmologists and optometrists, but instead hired a "consultant". This non-Committee
4 member "consultant" was an additional optometrist, neither appointed nor recommended by
5 CAEPS or CMA, that was not certified to treat glaucoma. In addition, this non-Committee
6 member "consultant" (Dr. Tony Carnevali, O.D.), whose recommendations served as the basis for
7 Regulation 1571, acted as a public official that made, participated in making, or attempted to use
8 his official position to influence a governmental decision in which he knew or had reason to know
9 he had a financial interest or a non-financial personal interest.

10 6. Petitioners further assert that the legislatively-mandated presumption -- that post-
11 April 2008 graduates of accredited optometry schools already have sufficient training to treat and
12 manage glaucoma patients without the necessity of additional, post-graduate training -- is no
13 longer valid. (*See repealed* Section 3041.10(d)(2) and Section 3041(f)(1).) This is because the
14 statutorily-required review of representative training programs, that was to be the basis for
15 deciding whether representative graduates should be required to undergo additional glaucoma
16 certification training, never occurred; half the Committee's members (*i.e.*, the ophthalmologists)
17 did not receive the data they required to carry out the Legislature's charge.

18 7. Glaucoma is a vision-threatening disease. In the absence of early diagnosis and
19 proper treatment, glaucoma can result in irreversible blindness.⁴ Recent incidents have
20 demonstrated to the citizens of California that such statements are not unwarranted hyperbole. As
21 Regulation 1571 was being shepherded through the rulemaking process, it came to light through
22 published reports that at least seven veterans suffering from glaucoma were reported to have gone
23 blind (and over 100 other veterans suffered either "progressive visual loss" or were identified as
24 being at high risk for losing their sight) as the potential result of having received substandard
25 healthcare from the Optometry Department of a Veterans' Affairs facility located in Palo Alto,

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27 ⁴ See "Facts About Glaucoma", an article published by the National Eye Institute (NEI). The NEI is part of
28 the National Institutes of Health (NIH) and is the Federal government's lead agency for vision research. This article
is available on the internet at http://www.nei.nih.gov/health/glaucoma/glaucoma_facts.asp.

California.⁵ Therefore, by way of this action, Petitioners seek a writ of mandate and declaratory and injunctive relief declaring Regulation 1571 void and invalid, and prohibiting its implementation and enforcement.

THE PARTIES

A. Petitioners

8. Petitioner CAEPS is a nonprofit, incorporated professional association organized under California law with its principal office in San Francisco, California. CAEPS is, now and at all times relevant to the allegations mentioned in this petition has been, an association of licensed physicians and surgeons specializing in the diagnosis and treatment of ailments affecting and related to the eye (i.e., ophthalmologists). In existence for over 50 years, the mission of CAEPS has been to serve the total visual healthcare needs of the people of California through public and professional education, membership services, and legislative advocacy. CAEPS' members and their patients have a clear, present and beneficial interest in these proceedings, and its members are by law required to be involved by licensed optometrists in the co-management, consultation and treatment of patients in certain circumstances. (*See, e.g.,* Bus. & Prof. Code § 3041.) CAEPS brings this action in its representative capacity on behalf of its members and their patients, many of whom will be directly and potentially adversely affected by the implementation of Regulation 1571.

9. Petitioner CMA is a nonprofit, incorporated professional association organized under California law with its principal office in Sacramento, California. CMA is, now and at all times relevant to the allegations mentioned in this petition has been, an entity consisting of approximately 35,000 physicians. CMA's primary purposes are to promote the science and art of medicine, the care and well being of patients, the protection of the public health, and the betterment of the medical profession. CMA's physician members practice medicine in California in all specialties and settings, including ophthalmology. CMA brings this action in its

⁵ *See, e.g.,* Bernstein-Wax, *VA says glaucoma patients at Palo Alto facility suffered severe vision loss due to mistreatment*, appearing in the San Jose Mercury News on July 22, 2009.

1 representative capacity on behalf of its members and their patients, many of whom will be
2 directly and potentially adversely affected by the implementation of Regulation 1571.

3 10. CAEPS' and CMA's members, and their patients, have a beneficial interest in
4 seeing that Regulation 1571 is invalidated. They treat patients who suffer, or may suffer, from
5 glaucoma. Regulation 1571 would enable the treatment of these patients by optometrists who
6 may not be qualified, thereby threatening the safety of the public.

7 **B. Respondents**

8 11. Respondent STATE BOARD OF OPTOMETRY is now, and at all times relevant
9 to the allegations herein has been, a California governmental agency. The Board is the state
10 agency generally charged with administering the Optometry Practice Act (the "Act"), including
11 promulgating and implementing properly authorized regulations thereunder. The Act is those
12 portions of the Business and Professions Code relevant to optometric care, including the
13 licensure, discipline, and regulation of those engaging in the practice of optometry in the State of
14 California. (*See* Chapter 7 of Division 2 of the Bus. & Prof. Code, § 3000 et seq. [the "Optometry
15 Practice Act" or "Act"]; *see also* Cal. Code Regs., tit. 16, § 1500 et seq. [regulations promulgated
16 under the Act].)

17 12. Respondent Board is now, and at all times relevant to the allegations herein has
18 been, generally, responsible for administering and enforcing the Act, including licensing
19 optometrists and certifying optometrists to treat glaucoma consistent with the law, but has failed
20 to perform its clear duty, has failed to refrain from acting in an unauthorized manner, and/or has
21 abused its discretion, by, e.g., creating, adopting and/or planning to implement Regulation 1571
22 contrary to statutory authority.

23 13. Petitioners are ignorant of the true names and capacities of the Respondents sued
24 herein as DOES 1 through 50, inclusive, and therefore sue said Respondents by such fictitious
25 names. Petitioners will seek leave to amend this Petition when the same have been ascertained.
26 Petitioners are informed and believe and thereon allege that each of such fictitiously-named
27 Respondents is responsible in some manner for the matters alleged herein. Petitioners are
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1 informed and believe and thereon allege that at all relevant times, each of the Respondents,
2 including each of the fictitiously-named Respondents, acted as the agents, servants, and/or
3 employees of one another, and that each and all of said Respondents was acting within the course
4 and scope of such agency or employment at the time the relevant events alleged herein occurred.

5 VENUE

6 14. Venue is proper in this court pursuant to Code of Civil Procedure section 401(a),
7 because the California Attorney General maintains an office in the City and County of San
8 Francisco.

9 GENERAL FACTUAL ALLEGATIONS

10 **A. The Difference Between Ophthalmologists and Optometrists**

11 15. Ophthalmologists are medical doctors (also referred to as "physicians" or
12 "physicians and surgeons") who specialize in treating the human eye. Like all M.D.'s,
13 ophthalmologists have attended and graduated from medical school, have undergone a one-year
14 in-hospital internship. As a result, ophthalmologists are generally licensed to diagnose and treat
15 ailments that affect the human body generally. (*See* Bus. & Prof. Code § 2050 *et seq.*) In
16 addition, ophthalmologists have undergone a three-year residency training program, and in many
17 cases a one- to two-year subspecialty fellowship (totaling eight to ten years of post-undergraduate
18 training). Because of their extra, specialized training, ophthalmologists are physicians who have
19 also specialized in the diagnosis and treatment of any and all disorders affecting the human eye
20 and its appendages, including any and all types of glaucoma.

21 16. Optometrists, on the other hand, are not M.D.'s, physicians, or surgeons.
22 Optometrists do not attend medical school and generally have significantly less and narrower
23 training than ophthalmologists. Optometrists undergo four years of optometry school and
24 (relevant to the issues herein) rarely undergo a one-year residency thereafter (totaling four to five
25 years of post-undergraduate training).

26 17. Traditionally, optometrists are those professionals who, for example, test vision
27 and prescribe lenses for vision correction. In California, optometrists are not licensed to diagnose
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1 and treat ailments that affect the human body generally, nor do they treat those of the eye and its
2 appendages universally. (See Chapter 7 of Division 2 of the Bus. & Prof. Code, § 3000 *et seq.*
3 [the Optometry Practice Act or "Act"].) Under the Act, California optometrists are only licensed
4 to engage in the treatment and management of "certain" disorders and dysfunctions of the visual
5 system. (See Section 3041(a).)

6 **B. Statutory History of Glaucoma Treatment Certification of California Optometrists**

7 18. Ten years ago, California optometrists were first provided a statutorily-delineated
8 path by which they could be certified to treat glaucoma.⁶ That path (made effective in 2001 by
9 Senate Bill 929) required each optometrist who wanted to be certified to treat glaucoma to
10 undergo: (a) classroom training, and (b) hands-on, physician-supervised (*i.e.*, "case management"
11 training through the collaborative treatment of 50 glaucoma patients for a period of two years for
12 each patient).

13 19. In 2008, the Legislature altered the glaucoma-certification path (and other aspects
14 of optometric care) with its passage of Senate Bill ("SB") 1406.⁷ Among other changes, SB 1406
15 created a temporary presumption that a person graduating from an accredited school of optometry
16 on or after May 1, 2008 possessed sufficient training to treat adults suffering from certain types of
17 glaucoma. However, SB 1406 also charged a 6-member committee of professionals (discussed in
18 more detail below) to review the training programs experienced by post-April 2008 accredited
19 optometry school graduates to determine whether the Legislature's temporary presumption should
20 be made permanent, or discarded in favor of requiring additional training for post-April 2008
21 graduates.

22 20. Thus, in contrast to the SB 929 certification regime (which established training
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24 ⁶ Prior to 2001, only ophthalmologists (*i.e.*, physicians and surgeons that specialize in the diagnosis and
25 treatment of diseases affecting the eye) were licensed to treat glaucoma in California.

26 ⁷ SB 1406, which became effective on January 1, 2009, amended sections 3041 and 3152, and added and
27 repealed section 3041.10. (Section 3041, particularly subdivision (f), and now-repealed section 3041.10 are most
28 pertinent to this action.) The only changes made to Section 3041 since the passage of SB 1406 were non-substantive
and were instituted by the passage of Assembly Bill 1164 (in 2009). Former section 3041.10 existed for only one
calendar year (2009) and was not amended during that year.

1 requirements imposed upon all optometrists, regardless of their graduation date), SB 1406
2 presumptively established a system that -- if left unaltered by the 6-member committee *after*
3 *completing its statutorily-mandated review* -- would result in the near-automatic certification of
4 post-April 2008 graduates of accredited optometric schools.

5 21. But what about optometrists who graduated before May 2008? Did the Legislature
6 create a path by which those optometrists could be certified under SB 1406? The Legislature's
7 answer was a qualified "yes". Yes, but only if a consensus could be reached between the
8 ophthalmologists and the optometrists on what that path should entail.

9 **C. Statutory Process for Revised Certification Requirements**

10 22. As to pre-May 2008 graduates who had not been certified to treat glaucoma under
11 SB 929, SB 1406 – through the enactment of Business and Professions Code section 3041.10 –
12 mandated a strict and time-sensitive process for the establishment of new certification
13 requirements for each of two distinct groups of optometrists: (a) those who had only completed
14 the classroom component of the training required under SB 929, and (b) those who had completed
15 neither the classroom nor the case management training required under SB 929. (*See* § 3041,
16 subds. (f)(4) & (f)(5), and Exhibit A to this writ, repealed Section 3041.10, subds. (d)(1) &
17 (d)(2).).

18 a. “The board [of optometry] shall appoint a Glaucoma Diagnosis and Treatment
19 Advisory Committee [(“GDTAC” or “Committee”)] as soon as practicable after
20 January 1, 2009.” Bus. & Prof. Code §3041.10(b).

21 b. In order that both optometrists and ophthalmologists are given equal voice in
22 exploring the possibility of consensus, the GDTAC must consist of three
23 optometrists and three ophthalmologists, appointed from a list recommended by
24 the California Optometric Association and Petitioners, respectively. *Id.*
25 §3041.10(b) and (c).

26 c. The GDTAC further “shall establish requirements for glaucoma certification” (*id.*
27 §3041.10(d)), and “shall submit its final recommendations to the [Office of
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Professional Examination Services ("OPES") on or before April 1, 2009." *Id.* §3041.10(f)(1).

d. OPES "shall examine the committee's recommended curriculum requirements" to come to its own final recommendation for the revised certification criteria. OPES then "shall present its findings and any modifications necessary . . . to the board [of optometry] on or before July 1, 2009." *Id.* §3041.10(f)(1)-(2)

e. Finally, the "board shall adopt the findings of [OPES] and shall implement certification requirements . . . on or before January 1, 2010." *Id.* §3041.10(f)(2).

23. In establishing such a strict timeline under detailed procedural requirements, the Legislature found and declared "that it is necessary to ensure that the public is adequately protected during the transition to full certification for all licensed optometrists who desire to treat and manage glaucoma patients." Bus. & Prof. Code 3041.10(a).

24. By the plain language of section 3041.10, the Legislature did not delegate any power to any individual or group possessing medicinal eye care expertise -- other than the 6-member GDTAC -- to create or modify glaucoma-certification requirements for California optometrists. By delegating exclusive powers to a small and specifically-defined decision-making body, made up of an even number of members of two differently-trained groups of eye care professionals, the Legislature manifested its intent that the Committee wield the exclusive authority to formulate glaucoma-treatment certification policy for California optometrists.

D. Regulation 1571 Fails to Meet the Procedural and Time-Sensitive Mandates

25. The Committee could not agree upon a new curriculum for either of the two specifically-identified groups of optometrists. (See Exhibit A, repealed Section 3041.10, subs. (d)(1) & (d)(2).) The Committee not only failed to achieve unanimity, it failed to achieve even a simple majority. Though both the ophthalmologists and the optometrists agreed with members of their own profession, no member of either group could agree with a member of the other.

26. In addition, the Committee's three ophthalmologists never received the information they needed to adequately review whether the temporary presumption (that post-April 2008

1 optometric graduates required no additional training) should be made permanent or discarded in
2 favor of additional training requirements. (*See* Exhibit A, repealed Section 3041.10, subds. (d)(2),
3 last paragraph.)

4 27. Despite the lack of statutory authority, each group of three healthcare professionals
5 on the Committee (*i.e.*, the ophthalmologists and the optometrists) opted to issue its own, separate
6 report. These two separate reports were then provided to OPES. OPES is a part of the
7 Department of Consumer Affairs ("Department"). It is generally tasked with surveying persons
8 engaged in occupations licensed under the purview of the Department (including optometrists)
9 and to produce occupational analyses for research and evaluation purposes. OPES does not
10 generally possess substantive expertise with regard to the individual occupations it analyzes.

11 28. The Legislature charged OPES with the duty to examine the 6-member
12 Committee's recommended "curriculum" requirements, and to make any necessary modifications
13 before presenting its findings and final recommendation to Respondent Board of Optometry for
14 implementation. However, OPES never received a single, recommended "curriculum" from the
15 Committee (let alone any curriculum agreed to by a majority of its members) by the April 1,
16 2009 statutory deadline. (*See* Exhibit A, repealed Section 3041.10, subd. (f)(1) [provision
17 containing deadline].) As the OPES itself acknowledged in correspondence to Petitioner CAEPS:
18 "The Legislature intended that we review one report. We instead received two." OPES
19 underscored the importance of relying on the Committee because "curriculum review is not one
20 of our core competencies."

21 29. Yet, in the absence of statutory authority and expertise, OPES took on the task of
22 attempting to reconcile the Committee's two competing reports and pass something along to the
23 Respondent Board of Optometry by its statutory deadline of July 1, 2009. (*See* Exhibit A,
24 repealed Section 3041.10, subds. (f)(2) [containing July 1, 2009 deadline].)

25 30. Recognizing that it did not have the expertise necessary to accomplish the task it
26 had taken on, OPES (despite the absence of any authorizing statutory provision and contrary to
27 the authority of Section 3041.10) sought to hire a "special consultant" to reconcile two reports
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never called for or authorized by the Legislature.

31. In an attempt to continue working with OPES, and in the interest of maintaining the delicate balance the Legislature established in structuring the Committee as it did, Petitioners urged OPES to either employ a consultant that was neither an optometrist nor an ophthalmologist, or to employ one of each. These requests were not honored.

32. Instead OPES sought out and received input from Respondent Board of Optometry in developing a job description for the "special consultant", even though SB 1406 clearly indicated that the Board was statutorily-precluded from choosing (or even suggesting) possible candidates for the original committee, and that the Board was explicitly limited to certain ministerial tasks. (*See generally* Exhibit A, repealed Section 3041.10.) Based upon a job description that incorporated statutorily unauthorized input from Respondent Board, the Department hired a "special consultant" who was not disinterested -- an optometrist named Tony Carnevali, O.D. Carnevali is an optometrist that is not, and was not at the time, certified to treat glaucoma under California law. He is also a former president and member of the board of trustees for the California Optometric Association.

33. Carnevali did not work with the GDTAC but instead independently came to his own conclusions about revisions to the certification requirements. He issued a separate report to OPES, delineating his own recommendations for glaucoma-treatment certification -- the third report OPES received on the same subject matter. OPES adopted no report of recommendations that came from the GDTAC as required by Business & Professions Code section 3041.10; instead, on or about July 1, 2009, less than a week after receiving Carnevali's over-100 page report, it adopted Carnevali's report and forwarded it to Respondent Board of Optometry, along with less than three pages of modifications. The GDTAC was never given a chance to comment or otherwise give its input on Carnevali's report of recommendations.

34. California's Administrative Procedure Act (Gov. Code § 11340 et seq.), or "APA", mandates that no state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which

1 is a regulation, unless it has been adopted as a regulation and filed with the Secretary of State.
2 (Gov. Code § 11340.5(a).) The APA's process involves several steps designed, among other
3 purposes, to provide the public with adequate notice and opportunity to comment regarding the
4 types of regulations it plans on implementing before it may actually implement them. One of the
5 initial steps required of an agency that wishes to implement a regulation, is for the agency to
6 publish, at least 45 days prior to a hearing considering the adoption of a regulation, notice of the
7 proposed regulatory action in the California Regulatory Notice Register. (See Gov. Code §
8 11346.4(a)(5).)

9 35. After receiving OPES's July 1, 2009 transmittal letter containing Carnevali's
10 report, Respondent Board of Optometry had roughly six months (until January 1, 2010) to
11 "implement" glaucoma-certification requirements as dictated by the Legislature; thereafter, its
12 statutory authority to do so would no longer exist. (See Exhibit A, repealed Section 3041.10,
13 subds. (f)(2) & (g).) However, Respondent Board did not publish notice of its proposed
14 regulatory action in the California Regulatory Notice Register (the "Notice Register") until on or
15 about November 6, 2009 -- approximately four months after it received OPES's transmittal letter
16 enclosing Carnevali's report. Moreover, the Notice Register indicated that Respondent Board
17 would not hold a hearing on the matter until December 22, 2009 -- only 10 days before the
18 Board's statutory authority to implement the regulation would expire.⁸

19 36. The Respondent Board did not actually hold its first public meeting, formally
20 agendizing and discussing comments regarding its proposed glaucoma-certification regulation,
21 until approximately March 16, 2010 (*i.e.*, after Respondent Board's statutory authority to adopt
22 and implement any regulation had expired on January 1, 2010).

23 37. Without any remaining statutory authority, Respondent Board continued to
24 agendize and publicly discuss more than one version of a proposed glaucoma-certification
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26 ⁸ Both Petitioners CMA and CAEPS submitted comments regarding the initial draft of Respondent Board's
27 regulatory proposal during the first 45-day comment period, which ended December 21, 2009, and the first 15-day
28 comment period, which ended before the Board's May 11, 2010 public meeting and well after former Section
3041.10 no longer existed.

1 regulation throughout 2010. On or about May 11, 2010, Respondent Board again agendized and
2 discussed modifications it had contemplated making to the proposed regulation at its prior (March
3 16) meeting regarding the subject, and after a 15-day public comment period. Respondent Board
4 adopted a version of Regulation 1571 at its May 11, 2010 meeting. The regulatory file was not
5 submitted to the Office of Administrative Law ("OAL") until approximately July 2010.

6 38. The rulemaking provisions of the California's APA indicate that when OAL
7 reviews a proposed regulation, it has the power to act in two ways -- it may either approve the
8 proposed regulation or disapprove it. (Gov. Code § 11349.3(a).) OAL is required by statute to
9 make its determination by comparing the regulatory proposal against six standards, including but
10 not limited to "authority", "clarity", and "consistency". (Gov. Code § 11349.1; *see also* Gov.
11 Code § 11349 [definitions of six standards].)⁹ OAL is bound to reject a regulatory proposal if it
12 determines that the proposal fails to comply with any of the six standards mentioned above, or if
13 the proposal fails to comply with Chapter 3.5 of the APA (commencing with Gov. Code §
14 11340). (*See* Gov. Code §§ 11349.1(a) & 11349.3(b).)

15 39. If an agency determines, "on its own initiative", that a regulation it has submitted
16 to OAL for review should be returned prior to completion of OAL's review process, the agency
17 may request the return of the regulation. (Gov. Code § 11349.3(c).) OAL shall not initiate the
18 return of a regulation "as an alternative to disapproval" of the regulation. (Gov. Code §
19 11349.3(d).) Yet, on or about September 23, 2010, rather than approving or disapproving the
20 proposed regulation, OAL specifically initiated the Board's next action. OAL sent an email to
21 Respondent Board indicating that it could not approve the file, and that OAL could either
22 disapprove Respondent Board's proposed regulation, or, as an alternative, the Board could
23 withdraw its proposed regulation. Within approximately one week of the email, Respondent
24 Board withdrew its initial regulatory proposal.

25 40. Less than a week after withdrawing the regulatory proposal, Respondent Board (on
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27 ⁹ The other three standards are necessity, reference, and nonduplication.
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1 or about October 4, 2010) issued a new proposed regulation for certification requirements for
2 another 15-day public comment period. The attempt to obtain approval for the regulations came
3 over nine months after the deadline required by Section 3041.10, which had long been
4 automatically repealed by its own accord. (See Exhibit A, repealed Section 3041.10, subds. (f)(2)
5 & (g).)

6 41. Again Petitioners CAEPS and CMA submitted comments to Respondent Board
7 regarding the new proposal. In addition to the numerous comments it made and submitted
8 throughout the entire rulemaking process, Petitioner CAEPS specifically pointed out how the
9 proposed regulation continued to fail (among other issues) to meet OAL's statutorily-mandated
10 standards of "authority", "clarity", and "consistency". (See Gov. Code §§ 11349.1(a) &
11 11349.3(b).)

12 42. Respondent Board held a final public meeting on or about October 22, 2010. At
13 that meeting, Respondent Board again rejected most if not all comments made by the Petitioners,
14 and then resubmitted its rulemaking file to Respondent OAL in or around the first week of
15 November 2010. OAL approved Respondent Board of Optometry's proposed Regulation 1571 on
16 or about December 9, 2010.

17 43. On or around January 8, 2011 Regulation 1571 became effective and implemented
18 revised certification requirements for optometrists to treat glaucoma -- over a year after Section
19 3041.10, the statute upon whose authority it is putatively based, ceased to exist.

20 PETITION FOR WRIT OF MANDATE

21 44. The allegations set forth above in Paragraphs 1 through 43, inclusive, are
22 incorporated herein by this reference as if set forth in full herein.

23 45. The Administrative Procedure Act ("APA") imposes numerous requirements on
24 the Board of Optometry to properly implement a regulation. The Board can issue and enforce a
25 regulation only within the scope of its authority, as specifically delegated by the Legislature, and
26 which are reasonably necessary to effect the purpose of the authorizing statute; regulations cannot
27 conflict or be inconsistent with other statutes. A regulation is invalid if it is outside the scope of
28

1 authority conferred to it by the Legislature. Gov't Code §11342.1 ("Each regulation adopted, to
2 be effective, shall be within the scope of authority conferred and in accordance with standards
3 prescribed by other provisions of law"). A regulation is also invalid if it is inconsistent and is in
4 conflict with the statute. Gov't Code §11342.2 ("no regulation adopted is valid or effective
5 unless consistent and not in conflict with the statute").

6 46. Respondent Board of Optometry has a clear, present and ministerial duty to act in
7 strict conformance with the laws of the State of California and to avoid violations of law,
8 including the APA.

9 47. Regulation 1571 failed to satisfy the requirements of the APA. In several respects
10 it squarely violated the carefully circumscribed procedures and deadlines established in Business
11 & Professions Code section 3041.10. The regulation was promulgated in excess of the authority
12 delegated to the Board of Optometry, and is therefore invalid.

13 48. CAEPS and CMA (on behalf of their members and their members' patients) have
14 no plain, speedy and adequate remedy in the ordinary course of law, other than relief sought in
15 this Petition. Petitioners' members (and/or members' patients) have suffered and will continue to
16 suffer irreparable injury if Regulation 1571 is not invalidated.

17 49. CMA and CAEPS have no administrative remedy that will result in preventing or
18 enjoining the implementation of Regulation 1571.

19 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

20
21 **FIRST CAUSE OF ACTION**
22 **Declaratory Relief**
[Code of Civil Procedure section 1060]

23 50. The allegations set forth above in Paragraphs 1 through 49, inclusive, are
24 incorporated herein by this reference as if set forth in full herein.

25 51. An actual controversy has arisen and now exists between Petitioners CMA and
26 CAEPS and Respondent Board of Optometry regarding their respective rights and duties.
27 Respondent maintains that it has acted lawfully in issuing, enacting and implementing Regulation
28

1 1571, and has indicated no intention of refraining from enforcing the regulation. Petitioners, on
2 the other hand, maintain that Regulation 1571 is ineffective and unenforceable.

3 52. CMA and CAEPS hence desire a declaration of the rights and powers, if any, of
4 Respondent to enforce Regulation 1571.

5 53. A declaration from the Court is necessary and appropriate at this time in order to
6 avoid confusion in the enforcement of Regulation 1571 and harm to the interests of CMA and
7 CAEPS's members and their members' patients.

8
9 **SECOND CAUSE OF ACTION**
Injunctive Relief

10 54. The allegations set forth above in Paragraphs 1 through 53, inclusive, are
11 incorporated herein by this reference as if set forth in full herein.

12 55. Respondent Board of Optometry lacks the authority to promulgate any regulation
13 pursuant to Business & Professions Code section 3041.10, because that statute was repealed on
14 January 1, 2010.

15 56. Regulation 1571 is invalid and unenforceable because it was not promulgated in
16 strict compliance with the procedural requirements and deadlines of section 3041.10.

17 57. CMA and CAEPS have no adequate remedy at law to protect their members'
18 interests, which will be harmed if Regulation 1571 is enforced or if the Board of Optometry seeks
19 to promulgate any other regulation pursuant to the now-repealed Business & Professions Code
20 section 3041.10.

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PRAYER

WHEREFORE, CMA and CAEPS pray for relief and judgment as follows:

1. For issuance of a writ of mandate ordering the Board of Optometry to repeal Regulation 1571 and to forever refrain from enforcing or further implementing it, and to take no additional action to promulgate any regulation purportedly under the authority of Business & Professions Code section 3041.10, which is now repealed;

2. For a declaration that Regulation 1571 is invalid and unenforceable;

3. For a permanent injunction prohibiting the Board of Optometry from enforcing or further implementing Regulation 1571, and to take no additional action to promulgate any regulation purportedly under the authority of Business & Professions Code section 3041.10, which is now repealed;

4. For costs of suit and an award of Petitioners' reasonable attorneys' fees to the maximum extent allowable by law; and

5. For other and further relief as the Court may deem just and proper.

Dated: January 11, 2010

LAW OFFICE OF ANDREAS C. ROCKAS

By: 

ANDREAS C. ROCKAS

Attorney for Petitioner California Academy of
Eye Physicians and Surgeons

Dated: January 11, 2010

FRANCISCO J. SILVA
LONG X. DO
CALIFORNIA MEDICAL ASSOCIATION

By: 

LONG X. DO

Attorneys for California Medical Association

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VERIFICATION

I, Dustin Corcoran, am the Executive Vice President and Chief Executive Officer of the California Medical Association, which is a Petitioner in the above-captioned proceeding. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, and know its contents. The facts stated therein are true to the best of my knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 10, 2011, at Sacramento, California.

A handwritten signature in black ink, appearing to read 'Dustin Corcoran', is written over a horizontal line.

Dustin Corcoran

VERIFICATION

I, Craig H. Kliger, M.D., am the Executive Vice President of the California Academy of Eye Physicians and Surgeons, which is a Petitioner in the above-captioned proceeding. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, and know its contents. The facts stated therein are true to the best of my knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 10, 2011, at San Francisco, California.



Craig H. Kliger, M.D.

Exhibit A

FindLaw[®] FOR LEGAL PROFESSIONALS

CAL. BPC. CODE § 3041.10 : California Code - Section 3041.10

Search CAL. BPC. CODE § 3041.10 : California Code - Section 3041.10

- Search by Keyword or Citation

(a)The Legislature hereby finds and declares that it is necessary to ensure that the public is adequately protected during the transition to full certification for all licensed optometrists who desire to treat and manage glaucoma patients.

(b)The board shall appoint a Glaucoma Diagnosis and Treatment Advisory Committee as soon as practicable after January 1, 2009. The committee shall consist of six members currently licensed and in active practice in their professions in California, with the following qualifications:

(1)Two members shall be optometrists who were certified by the board to treat glaucoma pursuant to the provisions of subdivision (f) of Section 3041, as that provision read on January 1, 2001, and who are actively managing glaucoma patients in full-time practice.

(2)One member shall be a glaucoma-certified optometrist currently active in educating optometric students in glaucoma.

(3)One member shall be a physician and surgeon board-certified in ophthalmology with a specialty or subspecialty in glaucoma who is currently active in educating optometric students in glaucoma.

(4)Two members shall be physicians and surgeons board-certified in ophthalmology who treat glaucoma patients.

(c)The board shall appoint the members of the committee from a list provided by the following organizations:

(1)For the optometrists' appointments, the California Optometric Association.

(2) For the physician and surgeons' appointments, the California Medical Association and the California Academy of Eye Physicians and Surgeons.

(d) The committee shall establish requirements for glaucoma certification, as authorized by Section 3041, by recommending both of the following:

(1) An appropriate curriculum for case management of patients diagnosed with glaucoma for applicants for certification described in paragraph (4) of subdivision (f) of Section 3041.

(2) An appropriate combined curriculum of didactic instruction in the diagnostic, pharmacological, and other treatment and management of glaucoma, and case management of patients diagnosed with glaucoma, for certification described in paragraph (5) of subdivision (f) of Section 3041.

In developing its findings, the committee shall presume that licensees who apply for glaucoma certification and who graduated from an accredited school of optometry on or after May 1, 2008, possess sufficient didactic and case management training in the treatment and management of patients diagnosed with glaucoma to be certified. After reviewing training programs for representative graduates, the committee in its discretion may recommend additional glaucoma training to the Office of Examination Resources pursuant to subdivision (f) to be completed before a license renewal application from any licensee described in this subdivision is approved.

(e) The committee shall meet at such times and places as determined by the board and shall not meet initially until all six members are appointed. Committee meetings shall be public and a quorum shall consist of four members in attendance at any properly noticed meeting.

(f)(1) The committee shall submit its final recommendations to the Office of Examination Resources of the department on or before April 1, 2009. The office shall examine the committee's recommended curriculum requirements to determine whether they will do the following:

(A) Adequately protect glaucoma patients.

(B) Ensure that defined applicant optometrists will be certified to treat glaucoma on an appropriate and timely basis.

(C) Be consistent with the department's and board's examination validation for licensure and occupational analyses policies adopted pursuant to subdivision (b) of Section 139.

(2) The office shall present its findings and any modifications necessary to meet the requirements of paragraph (1) to the board on or before July 1, 2009. The board shall adopt the findings of the office and shall implement certification requirements pursuant to this section on or before January 1, 2010.

(g) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

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3060.]

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NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: JUN-10-2011

TIME: 9:00AM

**PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL.
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

STATE BOARD OF OPTOMETRY, DOES 1-50

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

CALIFACADEMY OF EYE PHYSICIANS & SURGEONS, and
CALIF MEDICAL ASSOCIATION

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Court of the State of Calif.

County of San Francisco / 400 McAllister St. / San Francisco, CA 94102

CASE NUMBER:
(Número del Caso):

CGC-11-507241

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Francisco J. Silva, #214773 & Long X. Do, #211439 for Calif. Medical Association

CLERK OF THE COURT

DATE: JAN 11 2011
(Fecha)

JAN 11 2011

Clerk, by
(Secretario)

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): CALIFORNIA MEDICAL ASSOCIATION Francisco J. Silva, #214773 & Long X. Do, #211439 1201 J St., Ste.200, Sacramento, CA 95814		FOR COURT FILED SAN FRANCISCO COUNTY SUPERIOR COURT 2011 JAN 11 AM 1:06 CLERK OF THE COURT BY:	
TELEPHONE NO.: 916-444-5532 FAX NO.: 916-551-2027 ATTORNEY FOR (Name): CALIFORNIA MEDICAL ASSOCIATION			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civic Center Courthouse			
CASE NAME: CalAcademyEye Physicians&Surgeons and Cal Med Assoc.v. Brd Opto			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: CGC-11-507241 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): **Three**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 11, 2011
 Long X. Do

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

EXPERIENCED MEDIATORS ARE AVAILABLE
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"We had an excellent experience and, after 8 1/2 hours of mediation, [the BASF mediator] settled a very difficult case involving claims against four clients of ours by a wealthy investor who claimed inadequate disclosure was made."

Robert Charles Frieze, Esq.
Shartsis Frieze LLP

"The BASF Mediation Services is the best deal in town and the mediator was the best I have ever experienced."

Vernon Bradley, Esq.
Bradley Law Offices

"Much thanks to the mediator and The Bar Association of San Francisco. The mediator was extraordinary; he went above and beyond the call of duty, and his knowledge of real property issues greatly assisted the parties."

Robert P. Travis, Esq.
Travis and Pon

"BASF staff was very helpful – stayed on the task and kept after a hard to reach party. The mediator was great!"

Mark Abelson, Esq.
Campagnoli, Abelson
& Campagnoli

"The [BASF] mediator was excellent! He was effective with some strong, forceful personalities."

Denise A. Leadbetter, Esq.
Zacks, Utrecht & Leadbetter

PROCEDURES, PODCASTS, FORMS,
MEDIATOR BIOGRAPHIES AND
PHOTOGRAPHS:

www.sfbar.org/mediation
adr@sfbar.org or 415-982-1600

MEDIATION SERVICES

MEDIATION SERVICES



THE BAR ASSOCIATION
OF SAN FRANCISCO

WHAT IS BASF'S MEDIATION SERVICE?

Mediation Services was established in 2005 by The Bar Association of San Francisco (BASF) with extensive input from experienced mediators, litigators and judges. Our mediation service can assist with almost any type of dispute, from simple contract disputes to complex commercial matters.

WHO ARE THE MEDIATORS?

They are established mediators who have private mediation practices and have met our rigorous training and experience requirements. By going through BASF, you receive the services of these highly qualified mediators at a great value.

HOW MUCH DOES THE SERVICE COST?

A \$250 per party administrative fee is paid to BASF. This fee covers the first hour of mediator preparation time and the first two hours of session time, but your mediation is not limited to three hours. Time beyond these three hours is paid at the mediator's normal hourly rate. To qualify for the pro-bono hours from our professional mediators, parties must file the Consent to Mediate form with BASF.

HOW IS THE MEDIATOR CHOSEN?

You may request a specific mediator from our website (www.sfbbar.org/mediation) and indicate your choice on the BASF Consent to Mediate form, or you may indicate on the form that you would like BASF to assist with the selection.

WHY DO THE MEDIATORS GIVE FREE HOURS; IS THE SERVICE ONLY FOR "SMALL" MATTERS?

The mediators are professionals who have agreed to provide the free time as a service to BASF, allowing us to offer a unique mediation panel of high quality and value. Our mediators are available for any size case; we've handled everything from simple property disputes to complex business matters.

WHY SHOULD I GO THROUGH BASF, CAN'T I JUST CALL THE MEDIATOR DIRECTLY?

The BASF mediators are available privately but have also agreed to serve on our panel and provide three free hours as a service to BASF. If you go directly to one of our mediators, you do not qualify for the pro bono hours. Once you have filed with us, you will work directly with the mediator.

HOW LONG IS THE MEDIATION SESSION?

The time spent in mediation will vary depending on your dispute. The mediators are dedicated to reaching a settlement, whether you need a few hours or several days.

WHO CAN USE THE SERVICE?

The BASF mediators can be utilized by anyone and is NOT limited to San Francisco residents or issues. Also, the service may be used before a court action is filed or at any time during court action.

OUR CASE IS FILED IN COURT; HOW DO WE USE BASF'S MEDIATION SERVICE?

When you file the San Francisco court's stipulation to ADR, simply check the box indicating your choice as Mediation Services of BASF. Then complete BASF's Consent to Mediate form found on our website and file it with us, or call us for the form. (If the matter was filed in a different county, please check with that court for the appropriate process.)

WE ARE ON A DEADLINE; HOW QUICKLY CAN WE MEDIATE?

Once all parties have filed the BASF Consent to Mediate form and paid the administrative fees, BASF can normally have you in touch with the mediator within a day or two. If you have a deadline, staff will give the matter top priority.

WHAT TYPES OF DISPUTES CAN I MEDIATE?

BASF mediators are trained in dozens of areas of disputes. If you don't see the area you need in our 30+ panels found on our website and this brochure, just contact us; it is very likely we can match your need with one of our panelists.

MORE INFORMATION

Our website provides photographs, short biographies and hourly rates of our mediators. You can search by name or by area of law. For personal assistance, please call 415-982-1600.

Alternative Dispute Resolution (ADR) Program Information Package

Alternatives to Trial

**There are other ways to
resolve a civil dispute.**

The plaintiff must serve a copy of the ADR information package
on each defendant along with the complaint. (CRC 3.221(c))



**Superior Court of California
County of San Francisco**

Introduction

Did you know that most civil lawsuits settle without a trial?

And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?

These alternatives to a lawsuit are known as alternative dispute resolutions (ADR). The most common forms of ADR are mediation, arbitration and case evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities through dispute resolution programs and private neutrals.

Advantages of ADR

ADR can have a number of advantages over a lawsuit.

- *ADR can save time.* A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- *ADR can save money.* Court costs, attorneys fees, and expert fees can be saved.
- *ADR can be cooperative.* This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.
- *ADR can reduce stress.* There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.
- *ADR encourages participation.* The parties may have more chances to tell their side of the story than in court and may have more control over the outcome.
- *ADR is flexible.* The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.
- *ADR can be more satisfying.* For all the above reasons, many people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve a dispute, instead of filing a lawsuit. Even when a lawsuit has been filed, the court can refer the dispute to a neutral before the parties' position harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

Disadvantages of ADR

ADR may not be suitable for every dispute.

- If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.
- There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.
- The neutral may charge a fee for his or her services.
- If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.
- Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

ALTERNATIVE DISPUTE RESOLUTION PROGRAMS Of the San Francisco Superior Court

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to a mandatory settlement conference or trial."
(Superior Court Local Rule 4)

This guide is designed to assist attorneys, their clients and self-represented litigants in complying with San Francisco Superior Court's alternative dispute resolution ("ADR") policy. Attorneys are encouraged to share this guide with clients. By making informed choices about dispute resolution alternatives, attorneys, their clients and self-represented litigants may achieve a more satisfying resolution of civil disputes.

The San Francisco Superior Court currently offers three ADR programs for general civil matters; each program is described below:

- 1) Judicial Arbitration
- 2) Mediation
- 3) The Early Settlement Program (ESP) in conjunction with the San Francisco Bar Association.

JUDICIAL ARBITRATION

Description

In arbitration, a neutral "arbitrator" presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case. When the Court orders a case to arbitration it is called judicial arbitration. The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.

Although not currently a part of the Court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties

voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

Operation

Pursuant to CCP 1141.11 and Local Rule 4, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. A case is ordered to arbitration after the Case Management Conference. An arbitrator is chosen from the Court's Arbitration Panel. Most cases ordered to arbitration are also ordered to a pre-arbitration settlement conference. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a court trial within 30 days after the arbitrator's award has been filed.

Cost

There is no cost to the parties for judicial arbitration or for the pre-arbitration settlement conference.

MEDIATION

Description

Mediation is a voluntary, flexible, and confidential process in which a neutral third party "mediator" facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of the dispute after exploring the significant interests, needs, and priorities of the parties in light of relevant evidence and the law.

Although there are different styles and approaches to mediation, most mediations begin with presentations of each side's view of the case. The mediator's role is to assist the parties in communicating with each other, expressing their interests, understanding the interests of opposing parties, recognizing areas of agreement and generating options for resolution. Through questions, the mediator aids each party in assessing the strengths and weaknesses of their position.

A mediator does not propose a judgment or provide an evaluation of the merits and value of the case. Many attorneys and litigants find that mediation's emphasis on cooperative dispute resolution produces more satisfactory and enduring resolutions. Mediation's non-adversarial approach is particularly effective in disputes in which the parties have a continuing relationship, where there are multiple parties, where equitable relief is sought, or where strong personal feelings exist.

Operation

San Francisco Superior Court Local Court Rule 4 **provides three different voluntary mediation programs** for civil disputes. An appropriate program is available for all civil cases, regardless of the type of action or type of relief sought.

To help litigants and attorneys identify qualified mediators, the Superior Court maintains a list of mediation providers whose training and experience have been reviewed and approved by the Court. The list of court approved mediation providers can be found at www.sfsuperiorcourt.org. Litigants are not limited to mediators on the court list and may select any mediator agreed upon by all parties. A mediation provider need not be an attorney.

Local Rule 4.2 D allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate within 240 days from the date the complaint is filed. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

Private Mediation

The Private Mediation program accommodates cases that wish to participate in private mediation to fulfill the court's alternative dispute resolution requirement. The parties select a mediator, panel of mediators or mediation program of their choice to conduct the mediation. The cost of mediation is borne by the parties equally unless the parties agree otherwise.

Parties in civil cases that have not been ordered to arbitration may consent to private mediation at any point before trial. Parties willing to submit a matter to private mediation should indicate this preference on the Stipulation to Alternative Dispute Resolution form or the Case Management Statement (CM-110). Both forms are attached to this packet.

Mediation Services of the Bar Association of San Francisco

The Mediation Services is a coordinated effort of the San Francisco Superior Court and The Bar Association of San Francisco (BASF) in which a court approved mediator provides three hours of mediation at no charge to the parties. It is designed to afford civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint, in an effort to resolve the matter before substantial funds are expended on the litigation process. Although the goal of the program is to provide the service at the outset of the litigation, the program may be utilized at anytime throughout the litigation process.

The mediators participating in the program have been pre-approved by BASF pursuant to strict educational and experience requirements.

After the filing of the signed Stipulation to Alternative Dispute Resolution form included in this ADR package the parties will be contacted by BASF. Upon payment of the \$250 per party administration fee, parties select a specific mediator from the list of approved mediation providers or BASF will help them select an appropriate mediator for the matter. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waiver of the administrative fee based on financial hardship is available.

A copy of the Mediation Services rules can be found on the BASF website at www.sfbar.org/mediation or you may call the BASF at 415-982-1600.

Judicial Mediation

The Judicial Mediation program is designed to provide early mediation of complex cases by volunteer judges of the San Francisco Superior Court. Cases considered for the program include construction defect, employment discrimination, professional malpractice, insurance coverage, toxic torts and industrial accidents.

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court's Alternative Dispute Resolution Coordinator will coordinate assignment of cases that qualify for the program.

Cost

Generally, the cost of Private Mediation ranges from \$100 per hour to \$800 per hour and is shared equally by the parties. Many mediators are willing to adjust their fees depending upon the income and resources of the parties. Any party who meets certain eligibility requirements may ask the court to appoint a mediator to serve at no cost to the parties.

The Mediation Services of the Bar Association of San Francisco provides three hours of mediation time at no cost with a \$250 per party administrative fee.

There is no charge for participation in the Judicial Mediation program.

EARLY SETTLEMENT PROGRAM

Description

The Bar Association of San Francisco, in cooperation with the Court, offers an Early Settlement Program ("ESP") as part of the Court's settlement conference calendar. The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of the dispute. The two-member volunteer attorney panel reflects a balance between plaintiff and defense attorneys with at least 10 years of trial experience.

As in mediation, there is no set format for the settlement conference. A conference typically begins with a brief meeting with all parties and counsel, in which each is given an opportunity to make an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of the case. The Early Settlement Conference is considered a "quasi-judicial" proceeding and, therefore, is not entitled to the statutory confidentiality protections afforded to mediation.

Operation

Civil cases enter the ESP either voluntarily or through assignment by the Court. Parties who wish to choose the early settlement process should indicate this preference on the Case Management Statement (CM-110).

If the Court assigns a matter to the ESP, parties may consult the ESP program materials accompanying the "Notice of the Early Settlement Conference" for information regarding removal from the program.

Participants are notified of their ESP conference date approximately 4 months prior to trial. The settlement conference is typically held 2 to 3 months prior to the trial date. The Bar Association's ESP Coordinator informs the participants of names of the panel members and location of the settlement conference approximately 2 weeks prior to the conference date.

Local Rule 4.3 sets out the requirements of the ESP. All parties to a case assigned to the ESP are required to submit a settlement conference statement prior to the conference. All parties, attorneys who will try the case, and insurance representatives with settlement authority are required to attend the settlement conference. If settlement is not reached through the conference, the case proceeds to trial as scheduled.

Cost

All parties must submit a \$250 generally non-refundable administrative fee to the Bar Association of San Francisco. Parties who meet certain eligibility requirements may request a fee waiver. For more information, please contact the ESP Coordinator at (415) 782-9000 ext. 8717.

For further information about San Francisco Superior Court ADR programs or dispute resolution alternatives, please contact:

Superior Court Alternative Dispute Resolution,
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

Or, visit the Superior Court Website at www.sfsuperiorcourt.org

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

400 McAllister Street, San Francisco, CA 94102-4514

Case No. _____

Plaintiff
v.

**STIPULATION TO ALTERNATIVE
DISPUTE RESOLUTION**

Defendant

DEPARTMENT 610

The parties hereby stipulate that this action shall be submitted to the following alternative dispute resolution process:

- | | | |
|---|---|---|
| <input type="checkbox"/> Private Mediation | <input type="checkbox"/> Mediation Services of BASF | <input type="checkbox"/> Judicial Mediation |
| <input type="checkbox"/> Binding arbitration | | Judge _____ |
| <input type="checkbox"/> Non-binding judicial arbitration | | Judge _____ |
| <input type="checkbox"/> BASF Early Settlement Program | | |
| <input type="checkbox"/> Other ADR process (describe) _____ | | |

Plaintiff(s) and Defendant(s) further agree as follows:

Name of Party Stipulating Name of Party or Attorney Executing Stipulation Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: _____

Name of Party Stipulating Name of Party or Attorney Executing Stipulation Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: _____

Name of Party Stipulating Name of Party or Attorney Executing Stipulation Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: _____

☐ *Additional signature(s) attached*

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

FOR COURT USE ONLY

TELEPHONE NO.:

FAX NO. (Optional):

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

PLAINTIFF/PETITIONER:

DEFENDANT/RESPONDENT:

CASE MANAGEMENT STATEMENT

(Check one): ☐ **UNLIMITED CASE**
(Amount demanded exceeds \$25,000) ☐ **LIMITED CASE**
(Amount demanded is \$25,000 or less)

CASE NUMBER:

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____

Address of court (if different from the address above):

☐ Notice of Intent to Appear by Telephone, by (name):

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** (answer one):
 - a. ☐ This statement is submitted by party (name):
 - b. ☐ This statement is submitted **jointly** by parties (names):
2. **Complaint and cross-complaint** (to be answered by plaintiffs and cross-complainants only)
 - a. The complaint was filed on (date):
 - b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service** (to be answered by plaintiffs and cross-complainants only)
 - a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. **Description of case**
 - a. Type of case in ☐ complaint ☐ cross-complaint (Describe, including causes of action):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☐ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

- a. ☐ The trial has been set for *(date)*:
 b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

- a. ☐ days *(specify number)*:
 b. ☐ hours (short causes) *(specify)*:

8. **Trial representation *(to be answered for each party)***

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
 b. Firm:
 c. Address:
 d. Telephone number:
 e. Fax number:
 f. E-mail address:
 g. Party represented:

☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference *(specify code section)*:

10. **Alternative Dispute Resolution (ADR)**

- a. Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
 b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date)*:
 c. ☐ The case has gone to an ADR process *(indicate status)*:

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☐ Mediation
 (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
 (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
 (4) ☐ Binding judicial arbitration
 (5) ☐ Binding private arbitration
 (6) ☐ Neutral case evaluation
 (7) ☐ Other (specify):

e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

☐ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

a. ☐ Insurance carrier, if any, for party filing this statement (name):

b. Reservation of rights: ☐ Yes ☐ No

c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

a. ☐ There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

☐ Additional cases are described in Attachment 14a.

b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☐ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
--------------	--------------------	-------------

- c. ☐ The following discovery issues are anticipated (*specify*):

18. Economic litigation

- a. ☐ This is a limited-civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

20. Meet and confer

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

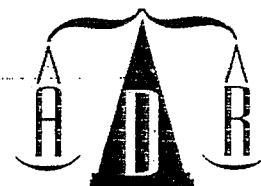
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.



Superior Court of California

County of San Francisco



HON. JAMES J. MCBRIDE
PRESIDING JUDGE

Judicial Mediation Program

JENIFFER B. ALCANTARA
ADR ADMINISTRATOR

The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to personal injury, professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial Mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable Gail Dekreon
The Honorable Ernest H. Goldsmith
The Honorable Curtis Karnow
The Honorable Charlene P. Kiesselbach
The Honorable Tomar Mason
The Honorable Anne-Christine Massullo
The Honorable Ronald Quidachay

The Honorable A. James Robertson, II
The Honorable Jeffrey S. Ross
The Honorable John K. Stewart
The Honorable Richard Ulmer
The Honorable Monica F. Wiley
The Honorable Mary E. Wiss

Parties interested in Judicial Mediation should file the Stipulation to Alternative Dispute Resolution form indicating a joint request for inclusion in the program and deliver a courtesy copy to Dept. 212. A preference for a specific judge may be indicated on the form but assignment to a particular judge is not guaranteed. Please allow at least 30 days from the filing of the form to receive the notice of assignment. The court Alternative Dispute Resolution Administrator will facilitate assignment of cases that qualify for the program.

Note: Space and availability is limited. Submission of a stipulation to Judicial Mediation does *not* guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
(415) 551-3876